



CHAIRMAN

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

May 19, 2005

The Honorable Edward J. Markey
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Markey:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter dated March 23, 2005, in which you expressed concerns about an application by Connecticut Yankee Atomic Power Company (CYAPCO) to NRC on disposal of radioactive demolition debris from the decommissioning of CYAPCO's Haddam Neck plant. Your letter commented on the process that will be used to resolve the issues involved in this matter. As you are aware, the NRC published the environmental assessment for this action in the *Federal Register* on April 18, 2005, and the exemption was issued to CYAPCO on April 19, 2005.

The general requirements for waste disposal are set forth in 10 CFR Part 20, Subpart K. Section 20.2002 states that a "...licensee or applicant for a license may apply to the Commission for approval of proposed procedures, not otherwise authorized in the regulations in this chapter, to dispose of licensed material generated in the licensee's activities." CYAPCO requested an authorization to use alternate disposal procedures consistent with the language of 10 CFR 20.2002. Specifically, CYAPCO requested authorization to exempt the slightly contaminated material from further Atomic Energy Act (AEA) and NRC licensing requirements and to dispose of the material at an Environmental Protection Agency, Subtitle C, Resource Conservation and Recovery Act (RCRA) hazardous waste disposal facility. In reviewing this request, the NRC staff ensured that any potential dose from the disposal would be maintained within the dose limits set forth in Part 20, "Standards for Protection against Radiation," and be as low as is reasonably achievable. The staff also evaluated the proposal to ensure it would not cause a significant environmental impact.

The demolition debris that CYAPCO has requested to dispose is characterized as byproduct or special nuclear material. The regulatory treatment of byproduct material is governed by 10 CFR Part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material." Section 30.11 implements NRC's authority to issue specific exemptions from the licensing and regulatory requirements, upon determining that the exemptions "...are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest." Similarly, 10 CFR 70.17 implements NRC's authority to issue specific exemptions under 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material." As part of a review of a request for off-site disposal at a non-NRC-licensed facility under 10 CFR 20.2002, NRC will ensure that applicable safety and environmental analyses demonstrate compliance with 10 CFR 30.11 and 70.17, and 10 CFR Part 51 before exempting the material to be disposed of from further NRC licensing and regulatory requirements.

Your letter suggests that the NRC should hold a public hearing on the CYAPCO request. In this case CYAPCO's 10 CFR 20.2002 request seeks an exemption from NRC regulations in conjunction with a request to use the alternative disposal procedures provided for in 10 CFR 20.2002, not a change in its license. In NRC practice, such requests do not ordinarily call for a public hearing. See *Cleveland Electric Illuminating Co., et. al.* (Perry Nuclear Power Plant, Unit 1), CLI-96-13, 44 NRC 315, 326-329 (1996); *Commonwealth Edison Co.* (Zion Nuclear Power Station), CLI-00-5, 51 NRC 90, 94-98 (2000).

However, the Commission notes that as part of the staff review process, NRC provided the States of Idaho and Connecticut an opportunity to comment on a draft of the environmental assessment prepared by the staff in response to the CYAPCO request. Comments were received from both the States of Idaho and Connecticut, which were taken into consideration in the development of the environmental assessment. In response to your letter, NRC staff also contacted the States of Washington and Massachusetts to ensure they were aware of the status of this request. The NRC will continue to evaluate the procedures in place to ensure effective communication of the implementation of this section of the regulations in an open and transparent manner.

Accordingly, NRC did not hold a public hearing on this action. The NRC staff published an Environmental Assessment and Finding of No Significant Impact in the *Federal Register* on April 18, 2005. Based on these findings, the NRC staff granted the exemption request on April 19, 2005.

You also referred to the ongoing NRC rulemaking on controlling the disposition of solid materials and the National Academy of Sciences (NAS) report, "The Disposition Dilemma, Controlling the Release of Solid Materials from Nuclear Regulatory Commission-Licensed Facilities." As you note, in the second finding of the NAS report, NAS recommended broad stakeholder involvement in NRC's decision-making process. In that regard, as part of its information-gathering for the rulemaking, NRC has actively sought stakeholder participation and input on alternate disposition approaches, as recommended by NAS. This included release of several documents, including an NRC Issues Paper issued in June 1999, and a scoping *Federal Register* document and a web-based Information Packet, issued in February 2003, both of which invited written and/or electronic comment, from stakeholders, on the issues. Twelve public meetings on this topic were conducted with stakeholders between September 1999 and February 2005, including three meetings NAS convened as part of its study of this subject. In addition to input at the 12 public meetings, NRC has also received nearly 3500 letters and e-mails, which presented a diverse set of views from the aforementioned range of stakeholder groups.

Currently the proposed rule is before the Commission. If the Commission directs staff to issue the proposed rule, the NRC would again solicit public comment on the proposed amendments to the regulations and on the technical analysis supporting the rule, including a draft generic environmental impact statement. The NRC also would consider discussing this issue further with stakeholders to solicit additional input on these documents.

The Commission recognizes your interest in this matter and appreciates your comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Nils J. Diaz", with a stylized, cursive script.

Nils J. Diaz